

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
June 10, 2004

ITEM: 11

SUBJECT: Administrative Assessment for Civil Liability against the various dischargers listed in Supporting Document No. 1 for Non-Payment of fiscal year 2003 construction storm water annual fees in violation of California Water Code section 13260. The Regional Board will decide on an order accepting payment of the proposed liability and waiver of hearing. (*Vicente Rodriguez*)

PURPOSE: The Regional Board will decide whether to adopt an order that accepts the dischargers' waiver to a right to a hearing and settlement of civil liability.

PUBLIC NOTICE: A public notice was posted on the Regional Board web page on May 5, 2004 and published in the Orange County Register and the San Diego Union-Tribune on May 7, 2004 and in the Riverside Press Enterprise on May 8, 2004. The written comment period ended on June 2, 2004, and the oral comment period ends at the June 10, 2004 Regional Board hearing.

DISCUSSION: On April 23, 2004, the Executive Officer issued 31 complaints for Administrative Assessment for Civil Liability against dischargers for failure to pay fiscal year 2003 construction storm water annual fees in violation of California Water Code section 13260. The 31 dischargers are those that failed to respond to 1) the original invoice issued by the State Water Resources Control Board (State Board) in November 2003, 2) the Demand Letter issued in January 2004, and 3) the Notice of Violation issued in February 2004.

The complaints were issued approximately 45 days after the State Board's NOV's were issued and fully 130 days after the annual fees were due to be paid. The complaints recommended liability of \$1,310 or \$1,410 reflecting an assessment of \$10 per day of violation. The State's cost of developing and defending an ACL before the Regional Board was a factor considered in calculating the liability. The State Board will reimburse Regional Board staff costs up to a maximum of one-half the amount of liability collected. The average collection procedure of this nature costs the State \$400.

Of the 31 complaints issued, 16 dischargers waived their rights to a hearing (Supporting Document No. 1); one complaint was withdrawn upon documentation that discharger is in bankruptcy; and four complaints were withdrawn due to new information. The remaining 10 complaints are scheduled for Public Hearing and are scheduled in item 16 of the agenda later today.

Those that submitted a signed waiver of right to a hearing:

- a. Agreed not to argue against the allegations;
- b. Submitted full payment of the liability; and
- c. Paid the amount of the annual fee or demonstrate it was not applicable.

No comments concerning this matter were received during the public comment period.

If the Regional Board does not accept the waiver, then the Regional Board will decide whether to conduct a hearing in the non-consent portion of the agenda or reschedule the hearing for a future Regional Board meeting.

State and Regional Board Enforcement Process for Invoices for Annual Fees

The State Board and the Regional Boards reliance on revenues from annual fees to support the cost of regulating permitted discharges has significantly increased as allocation from the general fund has been significantly curtailed. Consequently, the timely and efficient collection of annual fees has increasingly become an important issue.

Most dischargers with waste discharge requirements have exercised reasonable care and have paid their annual fees. However, a number of invoices for annual fees remain outstanding. Dischargers are provided ample opportunity to either pay the annual fee or demonstrate the project is completed through submittal of a Notice of Termination. Those dischargers that ignore the notices and subsequent warnings, whether through negligence or intent, cost the State additional resources and are the focus of these ACL complaints.

The following is the process followed by the State Board in invoicing and collecting annual fees prior to the Regional Board's initiation of enforcement action.

1. Storm Water Annual Fees are invoiced on a quarterly basis. For fiscal year 2003, the first and second quarter invoices were mailed in November 2003. The dischargers were given a 30-day deadline to pay the fee. Most dischargers exercised reasonable care by either paying the fee or by submitting a Notice of Termination (NOT) or otherwise demonstrating why they should no longer be subject to the storm water permit.
2. In January 2004, approximately 60 days after the initial invoice, the State Board issued "Demand Letters" to those dischargers that failed to pay the initial fee notice. The dischargers were not penalized if they then paid the fee or submitted an NOT or otherwise demonstrated why they should no longer be subject to the storm water permit
3. In February 2004, approximately 90 days after the initial invoice, the State Board issued Notice of Violations (NOV) to those dischargers that had yet to pay outstanding invoices. The NOVs warned that failure to pay the annual fee would make a discharger liable for assessment of civil liability from the date the invoice was due, in addition to the original invoice amount. Dischargers were not penalized if they then paid the fee or submitted an NOT or otherwise demonstrated why they should no longer be subject to the storm water permit

After this third step in the process, a discharger has made a decision three times not to pay the annual fee nor to exercise reasonable care by notifying the state or by submitting an NOT or otherwise demonstrating why they should no longer be subject to the storm water permit.

At that time, the Executive Officer determines whether to issue complaints for assessment of civil liability to owner/operators of the facilities of the remaining outstanding invoices.

LEGAL CONCERNS:

None.

**SUPPORTING
DOCUMENTS:**

1. Table 1. Summary of Dischargers that waived their right to a hearing.
2. Location Map of Discharger in Table 1.

RECOMMENDATION:

Adopt Tentative ACL Orders for items 11-A through 11-P as summarized in Table 1.

Table 1.**Item 11-1**

**SUMMARY OF DISCHARGERS
THAT WAIVED THEIR RIGHT TO A HEARING**

NO	AGENCY / FACILITY NAME	LOCATION	CITY	WDID	TENTATIVE ACL ORDER NO.
A	BIRTCHEER COMMERCIAL DEV PALM TERRACE	25521 25531 AND 25541 COMMERC	LAKE FOREST	S9 30C311900	R9-2004-0196
B	CENTURIAN CO INC SUN VILLA HOMES PC 02 021	2240 San Clemente Ave	VISTA	S9 37C318694	R9-2004-0199
C	BUIE CMNTY INC TRACT 23435	LINCOLN AND NUTMEG ST	MURRIETA	S9 33C313984	R9-2004-0198
D	DR HORTON LA HOLDING CO TR 23310 HIGHPOINT AT WILDOMAR	35454 ORO CT	WILDOMAR	S9 33C316679	R9-2004-0200
E	GALE & WENTWORTH CA LLC CARLSBAD CORPORATE CTR	EL CAMINO REAL AND FARADAY	CARLSBAD	S9 37C313860	R9-2004-0201
F	KB HOMES COASTAL BRINDLEWOOD & EASTLAKE	KING CREEK WAY AND HUNTE PKWY	CHULA VISTA	S9 37C311910	R9-2004-0202
G	KB HOMES COASTAL EMERALD & OLIVE AVE	EMERALD AND OLIVE AVE	OCEANSIDE	S9 37C311444	R9-2004-0203
H	KB HOMES COASTAL LAKE RANCHO VIEJO	3404 AVOCADO VISTA LN	FALLBROOK	S9 37C312175	R9-2004-0204
I	KB HOMES COASTAL MAR DEL SOL III & VIENTO	E PALOMAR AND PASEO LADERA	CHULA VISTA	S9 37C316291	R9-2004-0205
J	KB HOMES COASTAL MISSION SANTA FE SCENIC RIDGE	NORTH SANTA FE AVE AND MES	OCEANSIDE	S9 37C314209	R9-2004-0206
K	KB HOMES COASTAL SUNBOW PH1C UNIT 5	1417 VENTERS DR	CHULA VISTA	S9 37C314394	R9-2004-0207
L	KB HOMES COASTAL WOODCREEK & EASTLAKE TRAILS	SILVER SPRINGS CLUBHOUSE DR	CHULA VISTA	S9 37C311908	R9-2004-0208
M	MERIT PROP MGMT ICO CZ COTO DE CAZA SPORT PARK	31137 ALTA DR	COTO DE CAZA	S9 30C314479	R9-2004-0210
N	REDEEMER BY SEA LUTHERAN POINTSETTIA LANE REACH C	POINSETTIA LANE	CARLSBAD	S9 37C319280	R9-2004-0215
O	SAN DIEGO CO SHERIFFS DEPT SAN DIEGO FIREARMS TRAINING	446 ALTA RD	SAN DIEGO	S9 37C319064	R9-2004-0216
P	SUNROAD ENT OLD COACH RD & OLD COACH WAY	OLD COACH RD & OLD COACH WAY	POWAY	S9 37C308245	R9-2004-0221

ITEM 11-2



Location Map of Discharges in Table 1.

